

## **REMARKS**

Claims 1-36 are pending.

Claims 1-36 stand rejected.

Claims 27-36 are withdrawn.

Claims 27-36 have been canceled without prejudice or disclaimer of the subject matter recited therein.

Claims 37 - 50 have been added.

Claims 1-26 stand rejected.

### **Number of Claims Pending and Numbering of Claims.**

The Examiner indicated the present Office Action that claims 1-42 are pending. Applicants respectfully submit that claims 1-36 are pending.

Additionally, Applicants note that the originally filed application included two dependent claims numbered “28” and two dependent claims numbered “29”. Thus, Applicants originally filed 38 claims. However, because of the duplicate numbering, Applicants inadvertently only paid for a total of 36 claims.

Applicants have canceled 12 claims including two independent claims. Applicants have added 13 claims including two independent claims. Thus, a net of one dependent claim has been added. However, since Applicants inadvertently did not pay for two originally filed dependent claims, Applicants are submitting payment for three extra claims to account for the net one claim increase in the current amendment and the two dependent claims for which payment was not previously submitted.

### **Claim Rejections - 35 U.S.C. § 103**

Claims 1-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Koppelman et al. – Publication No. US 2004/0039640(hereinafter “*Koppelman*”), in view of U.S. Patent No. 6,105,001 to Masi(hereinafter “*Masi*”). Applicants respectfully traverse the rejection.

Applicants respectfully submit that *Koppelman* should not be cited against the present application in a rejection based upon 35 U.S.C. § 103.

Title 35 U.S.C. § 103(c)(1) states that:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections(e),(f), and(g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

The filing date of the present application is March 15, 2001. The publication date of *Koppelman* is February 26, 2004. The publication date of the parent application of *Koppelman* (Application No. 09/081,857, now U.S. Patent No. 6,662,164 (referred to as the “’164 Patent”)) is December 9, 2003. Thus, *Koppelman* and the ’164 Patent qualify as prior art only under 35 U.S.C. § 102(e).

The present application is assigned to Trilogy Development Group, Inc. of Austin, TX.

The ’164 Patent is assigned to the same assignee, Trilogy Development Group, Inc. In accordance with the Manual of Patent Examining Procedure § 306:

In the case of a division or continuation application, a prior assignment recorded against the original application is applied >(effective)< to the division or continuation application because the assignment recorded against the original application gives the assignee rights to the subject matter common to both applications.

Thus, the assignment to Trilogy Development Group, Inc. of the ’164 Patent is also applied to *Koppelman*.

Since *Koppelman* and the claimed invention of the present application were, at the time the claimed invention was made, subject to an obligation of assignment to the same person, as evidenced by the common assignment to Trilogy Development Group, Inc. in the assignment documents filed in the ’164 Patent and the Present Application, in accordance with 35 U.S.C. § 103(c)(1), *Koppelman* cannot be used as part of a rejection based upon 35 U.S.C. § 103.

Accordingly, Applicants respectfully request withdrawal of the rejection.

Applicants respectfully submit that new claims 37 - 50 are allowable for at least the same reasons as claims 1-26.

### **CONCLUSION**

In view of the remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the examiner is requested to telephone the undersigned.

FILED ELECTRONICALLY  
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Respectfully submitted,

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